IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 504 OF 2000

Naushad Ali Abdul Hasan Shaikh ....Appellant.
(Orig.Accd.)

Versus

The State of Maharashtra ....Respondent.

Miss. D.M.Shah Adv. (appointed) for the appellant.

Mrs.U.V.Kejriwal, APP for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

9.9.2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction passed by the Additional Sessions Judge, Greater Bombay on 20.7.1999 in Sessions Case No.1187/95 against the appellant, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal and as verbally canvassed before us.

2. With the assistance of the learned advocate for the appellant and the learned assistant Public Prosecutor we have scrutinized, perused and reappreciated the entire evidence available on record. Our scrutiny and reappreciation of the evidence of 14 witnesses examined by the prosecution discloses the story of the prosecution as under:

On 27.6.1995 around 10.00 a.m. The accused came to the building in Tata colony situated at Parel village and asked the watchman for permission to visit 13th floor. Since the watchman was knowing the accused he permitted him to go. After sometime another resident of 13th floor from the said building came down and informed the watchman that there is some disturbance in the flat of Shri Ghosh on the 13th floor. Therefore the lift man and watchman and some others went to 13th floor, obtained the key of the flat of Mr.Ghosh from the neighbour of the flat No.12-A/3 and opened the door. There they saw the accused standing by the door holding 9" long knife which was blood stained and on the door being opened the accused tried to escape. However he was over powered and ultimately given to the police. A woman was found murdered in the flat. After preliminary investigation the accused was arrested and ultimately charge sheeted under section 302 of the Indian Penal Code.

3. The learned trial Judge on appreciation of evidence of these 14 witnesses and other evidence came to the conclusion of guilt and consistent with that conclusion convicted the accused to suffer imprisonment for life. It is this order which is impugned in this appeal as aforesaid.

4. P.W.1-Pradeep Salvi was at the relevant time working as watchman in Tata colony and was on morning duty there on 27.6.1995 when around 10.00 a.m. Accused approached him for permission to visit 13th floor. Thereafter the witness was approached by one Sumant Gupta who complained of noise coming from flat of Shri Ghosh i.e. Flat

No.3 on the 13th floor. He therefore along with lift man Santosh and said Sumant Gupta came to 13th floor where 4/5 ladies were standing outside the door of Shri Ghosh. The latch key of flat No.3 was obtained from the resident of flat No.1 and flat No.3 was opened. The witness saw the accused standing inside with blooded knife in his hand. He along with others over powered the accused and took possession of the knife, complained the matter to the police and on arrival of the police the knife was handed over to him. Police started investigation, statement of this witness was recorded and he has proved it in the Court. The witness has been substantially cross examined but the entire cross examination does not reveal anything which would require that he should be disbelieved. P.W. 2 is a panch witness who proves the panchnama of things collected by the police at the spot including blood stained mattress. His evidence is not challenged.

6. P.W.3-Santosh Kalap who at the relevant time was working as lift man in Falcon Crest building in Tata colony describes how the building was and what was the arrangement for use of lift. The building was 24 storied. He then says that he knew one Premlata Salunke who was working as maid servant in the building. He also states that she was working as maid servant in the flat of Shri Ghosh and some other families in the same building. He then deposes that he knew one person who was friendly with Premlata and he identified the accused as being that person. He thus proves prior acquittance between the accused and the deceased.

7. P.W.4-Balu Durge has signed certain documents in K.E.M. Hospital the existence of which is not disputed. There is therefore no need to consider deposition of

this witness in detail.

8. P.W.5-Shankuntala Gupta has deposed that she is residing in the same building for the last seven years and is house wife her son being Sumant Gupta. She states that she is residing on 13th floor of 24 storied building. She gives description of the flats situated on her floor. Then she states that on 27.6.1995 she was present in her flat when around 10.00 a.m. She was in the flat with her son Sumant Gupta and they heard shouts from the flat of Shri Ghosh praying for help (Vachwa, Vachwa). She along with neighbour knocked the door of flat since there was no response the son went to the ground floor to call watchman-P.W.1. After arrival of the watchman and the lift man the door was opened by the key obtained from the mother of Shri Bhattacharya another resident of the same floor. According the witness one boy was found inside the flat, he was holding the blood smeared knife and tried to run away. He then ran away and entered the flat of the witness. The witness then says that she entered the kitchen and threw chilly powder in the eyes of that boy. It is then she says that she will be able to identify the boy and proceeds to identify the accused in the dock as the person in whose eyes she threw chilly powder and who was the accused holding blooded knife in the house of Shri Ghosh. She then proceeds to identify knife also. She then states that police were called on telephone No.100 and within three minutes police came there but she does not remember the exact number of police and then states that the maid servant in flat No.13 was dead. The witness has been cross examined. The witness has very exhaustively stated as to what happened in her presence and has unequivocally pointed out to the accused as the person who was found in the flat of Shri Ghosh with a blooded

knife and a dead body.

9. P.W.6-Sumant Gupta resident of adjacent flat on 13th floor has narrated as who how he came down on hearing shouts, how watchman and lift man were taken up, how they found accused, how he was holding a knife. In effect he corroborates several other witnesses on all material particulars. It would therefore not be necessary to repeat at length what he saw and what he has deposed.

10. P.W.7-Sidharth Pawar proves the panchnama of seizure of knife and identifies that knife in the Court. He is thus another panch along with P.W.2 who proved the panchnama of knife and proved that the knife was same which was used by accused for stabbing the victim. P.W.8-Tothagata Ghosh is owner of the flat. He deposes that Premlata was maid servant in his flat, she was aged about 18 years and she was murdered on 27th. He deposes that one set of keys of his flat always remained with his wife and one set of key was kept in the neighbouring flat of Shri Bhattacharya. He then states as to what happened on 27th June, 1995 before he left the house. He received at 10.45 a telephonic message from neighbour informing him that his maid servant is murdered. He therefore left the office and reached flat around 12.30 p.m. He also states that the accused sometimes used to visit the flat and was aquianted with Premlata. He gives complete description of his flat. He thus corroborates the other witness on the material points of the flat being opened by key available with Mr.Bhattacharya's family. There is thus corroboration on this vital point from the owner of the flat.

11. P.W.9-Lingappa Gurud is yet another witness who is a panch witness. He proved the panchnama of blood stained clothes recovered from the accused. He then describes how the clothes were rapped in khaki paper and were sealed properly. He identifies those clothes and proves the panchnama. His cross examination in inconsequential. Thus the fact that the clothes of the accused were blood stained stands proved.

12. P.W.10-Vinod Randive is police sub inspector who was attached to Kalachowki police station in June, 1995. He proceeds to depose as to how he received wireless call and how he went to the building. He then states as to what he noticed in flat of Shri Ghosh on 13th floor. He then took charge of the accused. He identifies the accused and states his name. He then talks of the victim being sent to K.E.M. Hospital and pronounced dead on arrival. He speaks of knife being taken into custody by police under a panchnama which was proved by other panchas. His cross examination is also inconsequential. There is no reason to doubt any of the statements made by this officer.

13. P.W.11-Mohammed Sagur runs a cutlery shop at Nul Bazar and sales other things beside knives. On 5.7.1995 when he was present in his shop police officer from Kidwai Marg police station brought one person to the shop and asked the witness whether that person had purchased the knife from his shop. The witness identified the person as the accused and said that 5/6 days ago a knife was sold to the accused by the witness. The witness identifies the accused, gave the name of the accused as Naushad Ali Hasan Shaikh. He also identifies the knife in the Court. The prosecution has thus proved the following facts:

i) accused having purchased the knife from P.W.11 5/6 days prior to occurrence;

ii) accused was seen entering the building at around 10.00 a.m. on 27.6.1995;

iii) the accused was seen in flat of Shri Ghosh on 13th floor when the door was opened;

iv) accused holding blood stained knife in his hand and victim was lying in pool of blood;

v) accused was accosted by the persons around and effectively detained;

vi) it is also established that he was friendly with the victim and that the death of the victim was homicidal is proved by P.W.12-Dr.Manik Sangle which aspect is not disputed by any one concerned.

14. P.W.13-Vasant Divate is the investigating officer. He deposes generally to the conduct of the investigation carried out by him. P.W.14-Vilas Kanade is another inspector who participated in the investigation.

15. It was on appreciation of this evidence that the learned trial Judge came to the conclusion of guilt and convicted the accused under section 302 of Indian Penal Code. As we have pointed out from our reappreciation of evidence noted above several circumstances necessary to be proved for coming to the conclusion of guilt in case of

circumstantial evidence are proved in this case by the police as mentioned in foregoing paragraph. It is therefore obvious that the prosecution has proved beyond reasonable doubt that Premlata met her homicidal death at the hands of the accused who had intention to kill her. Consequently we affirm the order of conviction as recorded by the learned trial Judge. We affirm all the findings on the basis of our reappreciation of evidence as noted above and therefore see no reason to interfere with the impugned order. In the result, therefore the appeals fails and is dismissed. We quantify the fees to be paid to the learned advocate appointed and the learned APP at Rs.1500/- for this appeal.